IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17482 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANDANGAURI WD/O MOHANLAL NAGINDAS & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 4.
A M CHAUHAN for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

Rule. Shri MR Mengdey, learned advocate waives service of Rule on behalf of respondent No.1. And Shri AM Chauhan, learned advocate waives service of Rule on behalf of respondents No. 1 to 4. With

the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat, dated 1.8.2005 in Revision Application SRD No. 169/97 in dismissing the said revision application on the question of limitation.

3. It appears from the record that being aggrieved and dissatisfied with the order passed by the Collector, Surat, dated 26.10.1994 in RTS Revision Application No. 27/1994 the petitioner preferred revision application being Revision Application No. 169/1997 before the Additional Secretary (Appeals), Revenue Department, State of Gujarat and there was a delay of 2 years and 9 months in preferring the said revision application and therefore an application for condonation of delay was also submitted by the petitioner. It appears from the order that in the said application it was submitted by the petitioner that the petitioner was not informed with regard to the order passed by the Collector, Surat, dated 26.10.1994 and he came to know about the said order from the Talati-cum-Mantri in the year 1997 and immediately he applied for

certified copy of the order passed by the Collector, Surat, which the petitioner received on 9.7.1997 and thereafter the revision application came to be filed on 29.10.1997. The Deputy Secretary (Appeals) after a period of 8 years of filing the revision application dismissed the said revision on the ground of delay by his order dated 1.8.2005. Being aggrieved and dissatisfied with the said order the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India and has requested to direct the revisional authority to decide and dispose of the said revision application on merits.

4. Shri PJ Vyas, learned advocate appearing on behalf of the petitioners has submitted that when the revision application was filed in the year 1997 which was admitted the same could not have been dismissed by the revisional authority after a period of 8 years of filing the same on the ground of limitation. It is submitted that when the revisional authority waited for 8 years the authority ought to have decided the revision application on merits rather than dismissing the same on the ground of limitation and that too after a period of 8 years of filing of the revision application. It is also further submitted that as such no reasons have been assigned by the Additional Secretary (Appeals) for not accepting the reasons given by the petitioner and therefore it is requested to allow the present

Special Civil Application.

5. Per contra, Shri AM Chauhan, learned advocate appearing on behalf of respondents No. 2 to 4, relying upon the affidavit-in-reply filed, has submitted that there was no merit in the case of the petitioner in the revision application and only with a view to get money the revision application was filed. It is also further submitted that the revisional authority has rightly rejected the revision application on the ground of limitation as the same was filed after a period of 2 years and 7 months.

6. It is not in dispute that the revision application came to be filed in the year 1997 and nothing is on record to show that at the time when the revision application was filed and accepted by the revisional authority it was subject to limitation. It appears, that for the first time the hearing took place before the revisional authority on 13.5.2005 and the petitioner was required to show cause why the revision application should not be admitted as the same was barred by limitation. The said revision application was pending for 8 years after admission and under the circumstances the Additional Secretary (Appeals) ought to have decided the same on merits rather than dismissing the same on technicalities more particularly when the revisional application was pending for 8 years.

7. For the reasons stated above, the petition succeeds. The order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 1.8.2005 in Revision Application SRD No. 169/1997 is hereby quashed and set aside. The matter is remanded to the Additional Secretary (Appeals), Revenue Department with a direction to decide the said Revision Application SRD No. 169/1997 on merits in accordance with law as early as possible preferably within the period of 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.